

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

3E Technologies, Inc.
IPP Energy LLC

Docket No. EL05-111-006
Docket No. ER01-688-000

ORDER APPROVING UNCONTESTED PARTIAL SETTLEMENT

(Issued May 22, 2006)

1. On March 24, 2006, IPP Energy LLC (IPP),¹ filed an Offer of Settlement (Settlement) in the above-captioned dockets, to resolve all issues related to IPP in this proceeding for the period between August 9, 2005 (the refund effective date) and December 14, 2005, the effective date upon which IPP received authorization from the Commission to charge market-based rates (MBR).²
2. As a condition of their MBR authority under the Federal Power Act, the Commission requires MBR sellers to submit an updated market power analysis every three years. On May 31, 2005, the Commission issued an order announcing its policy on non-compliance with the conditions of MBR authority, and directed that certain MBR sellers, including IPP, had until 60 days following the order, July 30, 2005, to comply with the Commission's requirements, or their MBR authority would be revoked.³ In that order, the Commission also instituted an

¹ IPP is a limited liability company that owns and operates a 47.4 MW natural gas cogeneration facility, located in New York, and is wholly-owned by TransAlta USA.

² See Notice of Issuance of Order, issued March 2, 2006, in Docket Nos. ER06-459-000 and ER01-688-002 (notification of March 1, 2006 Order issued pursuant to delegated authority accepting, for filing, IPP's January 4, 2006 application for market-based rate authority, effective December 14, 2005).

³ *3E Technologies, Inc., et al.*, 111 FERC¶ 61,295 (2005) (May 31, 2005 Order).

investigation under section 206 of the Federal Power Act in Docket No. EL05-111-000 to determine whether the rates charged by the MBR sellers remain just and reasonable. Notice of this investigation and the refund effective date was issued June 1, 2005, and published in the *Federal Register* on June 10, 2005, resulting in a refund effective date of August 9, 2005.⁴

3. IPP made no filing in response to the Commission's May 31, 2005 Order. Consequently, in an order issued November 3, 2005,⁵ the Commission revoked IPP's MBR authority and terminated its MBR tariff, effective November 3, 2005, and established hearing and settlement judge procedures to determine whether and in what amount IPP should be required to disgorge any profits from these sales. The Commission directed IPP to inform the Commission of whether it made any such MBR sales after the refund date established in the proceeding. In the order, the Commission held the hearing in abeyance and directed that a settlement judge be appointed to address the issues in this case.

4. On March 27, 2006, Commission Trial Staff filed initial comments supporting the Settlement. No other comments were filed. On May 3, 2006, the Settlement Judge certified the Settlement to the Commission as an uncontested partial settlement.

5. The subject settlement is fair and reasonable and in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

⁴ 70 *Fed. Reg.* 33,888 (2005).

⁵ *3E Technologies, Inc.*, 113 FERC ¶ 61,124 (2005). On December 5, 2005, IPP filed a request for rehearing of the Commission's decision in the November 3, 2005 Order to revoke IPP's MBR authority. Pursuant to Section B of the Settlement, IPP indicated that, upon issuance of a final order approving the Settlement without conditions or modifications that are unacceptable to IPP, it will withdraw its application for rehearing of the November 3, 2005 Order, and will tender refunds in the sum of \$30,000. On April 6, 2006, the Commission denied IPP's request for rehearing of the November 3, 2005 Order. *3E Technologies, Inc.*, 115 FERC ¶ 61,019 (2006).

6. This order terminates Docket Nos. EL05-111-006 and ER01-688-000.

By direction of the Commission. Commissioner Kelly dissenting in part
with a separate statement attached.

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

3E Technologies, Inc.
IPP Energy LLC

EL05-111-006
ER01-688-000

(Issued May 22, 2006)

KELLY, Commissioner, *dissenting in part*:

For the reasons I have previously set forth in *Wisconsin Power & Light Co.*, 106 FERC ¶ 61,112 (2004), I do not believe that the Commission should depart from its precedent of not approving settlement provisions that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the “just and reasonable” standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate.

Therefore, I disagree with this order to the extent it accepts for filing a settlement with an explanatory statement that provides, in relevant part, that the standard of review for changes to the Settlement Agreement proposed by a Party, a non-Party, or the Commission acting *sua sponte*, shall be the Mobile-Sierra “public interest” standard of review.

Suedeem G. Kelly